In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-260

JACK L. KING, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the district court for the Southern District of Florida, petitioner was convicted on 12 counts of a 14-count mail fraud indictment. He was given concurrent sentences of imprisonment for one year and one day on the first eleven counts and a consecutive sentence of three years' probation on the other count. He was also fined one thousand dollars on the first count. The court of appeals affirmed his conviction *per curiam*.

The indictment charged that petitioner, an attorney specializing in immigration matters, and his secretary[1] devised a scheme for defrauding Cuban resident aliens who desired to bring their relatives to this country

[1] His secretary was tried with him but, in her case, the jury was unable to reach a verdict and a mistrial was declared.

from Cuba. In furtherance of the scheme, false representations were made to these persons that, for a fifty-dollar fee, petitioner would prepare documents to be mailed to their relatives in Cuba which would expedite the process by which they would obtain the necessary permission to leave. It was also falsely suggested that petitioner had contacts with the Immigration Service which would be helpful in this regard. The documents prepared by petitioner were, as he knew, totally useless for the purposes ascribed to them.

Petitioner contends that the trial court erred by excluding certain testimony by defense witnesses, Cuban refugees to whom the documents had been sent. These witnesses were allowed to testify that they presented the documents to Cuban authorities and subsequently received permission to leave Cuba. The court refused to permit them to state that there was a causal relationship between the two events (II A. 483–484, 487–511).[2] This ruling was correct, since the excluded testimony would have been hearsay or opinion.[3]

Petitioner also complains that most of the government witnesses dealt only with his secretary and not with him. He asserts that, under *Ingram* v. *United States,* 360 U.S. 672, he cannot be held liable for misrepresentations made by his employee of which the government did not prove he had knowledge (Pet.

[2] "A." refers to the two-volume Appendix in the court of appeals.

[3] The present case is therefore not comparable to *United States* v. *Shavin,* 287 F. 2d 647 (C.A. 7), upon which petitioner relies, for the evidence improperly excluded in that case dealt with objective facts, not opinion.

11–13). Petitioner, however, was the prime mover of the fraudulent scheme, rather than merely a subordinate employee, as were the defendants in *Ingram*. The jury could properly infer, in all the circumstances of this case, that any misrepresentations made by the secretary were made under his direction and with his approval.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

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